attempt in these cases is not to establish a divorce by estoppel, but to determine property rights. See *Marvin* v. *Foster* (1895) 61 Minn. 154, 160, 63 N. W. 484. But, it is submitted, the real question in the principal case is one of policy. Policy will not permit a divorce by estoppel. See *Ashdown* v. *Ashdown* (1919) 178 N. Y. Supp. 565, 566. A remarriage, where one party has a legal spouse, is void *Stein* v. *Dunne* (1907) 119 App. Div. 1, 103 N. Y. Supp. 894, *aff'd* 190 N. Y. 524, 83 N. E. 1132. It may be shown collaterally. *Stein* v. *Dunne, supra.* It follows, therefore, that the wife would not have any rights in the property of her second husband, and might become a charge on the state if not allowed rights in her legal husband's property. As between the legal husband and the state it seems that the burden should be cast on the former. *Cf. Jones* v. *Newton and Llanidloes Guardians* (1920) 124 L. T. R. (N. S.) 23; (1921) 21 COLUMBIA LAW REV. 384.

EVIDENCE—CORROBORATION—THIEF NOT AN ACCOMPLICE OF THE RECEIVER OF STOLEN GOODS.—The defendant was convicted of knowingly receiving stolen goods. The trial judge charged the jury that they might convict upon the uncorroborated testimony of the thief. On appeal, *held,* the charge was correct. *People* v. *Kupperschmidt* (App. Div. 1st Dept. 1921) 189 N. Y. Supp. 858.

The giver of a bribe is uniformly held to be an accomplice of the receiver. *People* v. *Coffey* (1911) 161 Cal. 433, 119 Pac. 901. This is true despite the fact that the giving and receiving are separate offenses. In the case of perjury, the perjurer is an accomplice of the suborner. See *People* v. *Gilhooley* (1905) 108 App. Div. 234, 235, 95 N. Y. Supp. 936. Similarly, a purchaser of intoxicating liquors is an accomplice of the seller. *Chandler* v. *State* (Tex. 1921) 231 S. W. 108. Some jurisdictions hold, in accord with the principal case, that the thief is not an accomplice of the receiver of stolen goods. *Springer* v. *State* (1897) 102 Ga. 447, 30 S. E. 971; *State* v. *Kuhlman* (1899) 152 Mo. 100, 53 S. W. 416. The basis of these decisions is that larceny is a separate crime from receiving stolen goods. But an accomplice is one who might have been convicted as principal or as an accessory before the fact; and to warrant such conviction the accused must have taken part in the perpetration of, or preparation for the crime, with intent to assist therein. See *People* v. *Zucker* (1897) 20 App. Div. 363, 365, 46 N. Y. Supp. 766. Certainly, the thief who sells the goods takes part in the perpetration of the crime of receiving stolen goods. The test should be, not whether both parties have been guilty of the crime charged, or of any other crime, but rather whether both participated in the acts resulting in the crime. This view is upheld in some jurisdictions. *State* v. *Greenburg* (1898) 59 Kan. 404, 53 Pac. 61; *Rosen* v. *United States* (C. C. A. 1920) 271 Fed. 651. On grounds of logic and analogy, therefore, the decision in the instant case seems unsound.

EVIDENCE—INSANITY AS A DEFENSE IN CRIMINAL ACTIONS—BURDEN OF PROOF.—In a trial for murder, the jury were charged that the defendant must satisfy them that he was insane at the time the crime was committed. After a conviction the defendant appealed. *Held,* the accused need not satisfy the jury that he was insane. He need only establish his insanity by a preponderance of the evidence. A new trial was ordered. *State* v. *Hauser* (Ohio 1920) 131 N. E. 66.

Sanity of the accused is an essential element of the crime, as an insane person is incapable of having the *mens rea.* See *Davis* v. *United States* (1895) 160 U. S. 469, 485, 16 Sup. Ct. 353; Bishop, *New Criminal Law* (8th ed. 1892) § 376. Yet the state need not in the first place introduce any evidence of the defendant's sanity, because of the general presumption of sanity. The burden of going forward with evidence is therefore on the accused. See *Davis* v. *United States, supra,* 486. But after the accused has introduced evidence, the cases are divided as to who has the burden of proof. Some courts mistakenly reason, that because

of the presumption the defendant must satisfy the jury by the clear preponderance of proof that he is insane. *Graves* v. *State* (1883) 45 N. J. L. 347. Others hold that a simple preponderance of the evidence is sufficient. *Keener* v. *State* (1895) 97 Ga. 388, 24 S. E. 28. Both seem wrong. There is a line of cases in support of the better rule, that the state must prove beyond a reasonable doubt that the defendant was sane. *Davis* v. *United States, supra*; *Walker* v. *People* (1882) 88 N. Y. 81. Insanity is not soundly an affirmative defense, because by denying the criminal intent it denies the crime. The defendant having raised the issue, the state must prove sanity, as it does the physical act in the crime, beyond a reasonable doubt. If the jury is uncertain, the defendant should be acquitted. This rule does not encourage insanity as a sham defense. The usual scepticism of the jury in regard to such a frequently interposed defense, takes care of that.

GIFTS—*Inter Vivos* AND *Causa Mortis*—TESTAMENTARY INSTRUMENT.—The deceased, about to undergo an operation for cancer, executed and delivered to the defendant an instrument, in form a quit-claim deed, of all her real and personal property. The instrument was to take effect only upon her death and provided the donee survived her. As shown in the report of the case at the Trial Term (114 Misc. 483, 186 N. Y. Supp. 712) the deceased apparently recovered from the operation, but died four years later from cancer, following a second operation. In an action by the heir at law, *held,* the instrument did not pass title. *Butler* v. *Sherwood* (3d Dept. 1921) 196 App. Div. 603, 188 N. Y. Supp. 242.

The instrument was not a valid deed since it was revocable and to act *in futuro*. Similarly, there was no executed gift *inter vivos*. *Wertheimer* v. *Baum* (1908) 59 Misc. 527, 11 N. Y. Supp. 18. The instrument rather was testamentary in character, *Knight* v. *Tripp* (1898) 121 Cal. 674, 54 Pac. 267; *In re Belcher's Will* (1872) 66 N. C. 51; but invalid as a will since there had been no compliance with statutory requirements for wills. Gifts executed prior to a serious operation may be upheld as *causa mortis*. *Ridden* v. *Thrall* (1891) 125 N. Y. 572, 26 N. E. 627. But such a gift is complete upon delivery, though revocable by the donor's recovery. See *Ridden* v. *Thrall, supra,* 579. So even if there had been an unconditional delivery, the recovery of the donor would operate as a revocation, even though she later died due to the same disease. *Weston* v. *Hight* (1840) 17 Me. 287. Therefore, from whichever angle viewed, the proper result was reached. The court, however, seems partially to base its decision as to the invalidity of the gift on different and questionable grounds, *viz.,* that there was not such a delivery as could pass title *inter vivos* to chattels. It seems well settled, in most jurisdictions, that a constructive or symbolic delivery is sufficient. See *Beaver* v. *Beaver* (1889) 117 N. Y. 421, 428-429, 22 N. E. 940. However, in some jurisdictions symbolic delivery is valid only where actual physical delivery is impossible. *Cf. Cronin* v. *Chelsea Bank* (1909) 201 Mass. 146, 87 N. E. 484. In New York, the delivery of the instrument of gift constitutes a valid delivery. *Hawkins* v. *Union Trust Co.* (1919) 187 App. Div. 472, 175 N. Y. Supp. 694; *Matter of Cohn* (1919) 187 App. Div. 392, 176 N. Y. Supp. 492; see (1920) 20 COLUMBIA LAW REV. 196. Thus, though the court reaches the correct result, it is aided in so doing by one faulty premise.

MANDAMUS—PUBLIC SCHOOL AUTHORITIES—ADMINISTRATIVE LAW.—The plaintiff satisfactorily completed her high school course of study, but was denied a diploma because she refused to wear a recently fumigated gown at the graduation ceremony. In mandamus proceedings to compel the issue of the diploma, *held,* for the petitioner. *Valentine* v. *Independent School Dist. of Casey* (Iowa 1921) 183 N. W. 434.

The defendants in the instant case were authorized by statute to prevent